

Internal Revenue Service
District Director

Department of the Treasury

Person to Contact:

Telephone Number:

Refer Reply to:

EIN:

Date:

Dear Sir or Madam:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(12) of the Internal Revenue Code of 1986.

We have also considered whether you qualify for exemption under section 501(c)(4) of the Code.

For your organizing document, you submitted a Declaration of Easements, Conditions, and Obligations which was filed in _____ County, _____, on _____.

Your activities are related to the construction and maintenance of a private road and easement and are limited to arrangements for road work and collection of assessments. Assessments are levied against _____ lot owners and four easement holders.

Section 501(c) of the Code describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

"(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses."

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

Section 1.501(a)-1(a) of the Federal Income Tax Regulations provides, in part, that:

"(3) An organization claiming exemption under section 501(a) and described in any paragraph of section 501(c) (other than section 501(c)(1)) shall file the form of application prescribed by the Commissioner and shall include thereon such information as required by such form and the instructions with respect thereto."

An application for recognition of exemption must be accompanied by a conformed copy of an organization's Certificate of Incorporation, Constitution, Articles of Association, Trust Indenture, or other enabling instrument. If the organization does not have an organizing document, it will not qualify for exemption. A Declaration of Easements, Conditions, and Obligations standing alone is not an organizing document.

Exemption as a like organization is restricted to organizations which are similar to mutual ditch, irrigation and telephone companies, and does not extend to all mutual or cooperative organizations. For instance, exemption has been granted to an association organized for the protection of river banks against erosion whose only income consisted of assessments against the property owners concerned, and to a nonprofit organization which provided and maintained a two-way radio system for its members on a cooperative or mutual basis. See Revenue Ruling 68-564, 1968-2 C.B. 221, and Revenue Ruling 57-420, 1957-2 C.B. 308.

Section 1.501(c)(4)-1(a) of the Regulations provides that a civic league or organization described in section 501(c)(4) of the Code may be exempt if it is not organized or operated for profit and is operated exclusively for the promotion of social welfare. The Regulations describe social welfare as promoting in some way the common good and general welfare of the people of the community. A section 501(c)(4) organization is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 74-17, 1974-1 C.B. 130, provides that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance and care of the common areas of the project, as defined by State statute, with the membership assessments paid by the unit owners does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code. The services provided constitute private benefits not within the purview of section 501(c)(4).

This ruling may be distinguished from Revenue Ruling 74-99, 1974-1 C.B. 131, which provides that, to qualify for exemption under section 501(c)(4), a homeowners association must (1) serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) not conduct activities directed to the exterior maintenance of private residences, and (3) make the common areas or facilities it owns and maintains available for the use and enjoyment of the general public.

The Internal Revenue Service takes the position that in order for an organization to qualify for exemption from Federal income tax as a social welfare organization described in section 501(c)(4) of the Code, it must be primarily engaged in promoting in some way the common good and general welfare of the community as a whole.

Maintenance of private road and easement is not similar to a mutual ditch, irrigation or telephone company. Therefore, you are not described in section 501(c)(12) of the Code.

Since you provide services to your membership similar to those described in Revenue Ruling 74-17 rather than serve in a capacity similar to a governmental unit as described in Revenue Ruling 74-99, you are not described in section 501(c)(4) of the Code.

You do not have an acceptable organizing document. To pursue exemption from Federal income tax, it would be necessary for you to incorporate or adopt articles of association, a constitution, or similar governing instrument.

Accordingly, we hold that you are not entitled to exemption from Federal income tax as an organization described in section 501(c) of the Code.

You are required to file income tax returns annually with your district director.

Contributions made to you are not deductible as charitable contributions as defined in section 170(c) of the Code.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement Form 6018, Consent to Proposed Adverse Action. Please note the instructions for signing on the reverse side of this form.

[REDACTED]

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will become our final determination in this matter.

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018
Self-addressed envelope